



February 7, 2017

VIA ECF

Honorable P. Kevin Castel
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Galindo v. BLL Restaurant Corp., et al.*
Case No. 1:15-cv-05885-PKC

Dear Judge Castel:

This law firm represents Defendants in connection with the above-referenced matter, and writes to advise the Court of the circumstances surrounding Plaintiff's recent motions, and to request that Plaintiff's motion for a default judgment be deemed withdrawn and that Defendants be afforded to until March 15, 2017 to answer or otherwise move in response to Plaintiff's complaint. We have conferred with Plaintiff's counsel, who consents to this request.

As Plaintiff's counsel is aware, this law firm was retained to represent the Defendants back in September 2015, around the time that this action was commenced. Upon being retained, we immediately reached out to Plaintiff's counsel to discuss the timing for Defendants to answer or otherwise move in response to Plaintiff's Summons and Complaint. During that discussion, Plaintiff's counsel confirmed that the Summons and Complaint had not been served on Defendants and, thus, Defendants' time to respond had not yet begun to run. In lieu setting a time for Defendants' to respond to this action, Plaintiff's counsel suggested instead that he simply get back to us with a proposal to resolve this matter. We agreed and, following that call, I sent Plaintiff's counsel a confirmatory email on September 22, 2015, a copy of which is attached hereto.

Subsequently, after receiving no response, I emailed Plaintiff's counsel on October 1, 2015 for a status update. However, we received no response. Moreover, in contravention of Federal Rule 4(m), Plaintiff's failed to serve the Complaint on the individual defendants within 90 days after the Complaint was filed.¹ Accordingly, by all accounts, Plaintiff appeared to have abandoned this case.

Today, while conducting a routine review of the docket, we discovered that after over a year of inactivity, Plaintiff's counsel, without notifying us, had recently filed two motions in this action. The first motion sought to extend Plaintiff's time to serve the Complaint on the individual defendants, which failed to set forth any excuse, much less demonstrate the requisite good cause, for failing to timely serve the Summons and Complaint. Yet, by not notifying this firm of its existence, Plaintiff

¹ Federal Rule 4(m) provides "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." (emphasis added).

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was able to obtain such relief on default. The second is a presently pending motion to hold *BLL Restaurant Corp.* (“BLL”) in default.

This morning, when we discovered these two motions, I immediately reached out to Plaintiff’s counsel to obtain his agreement to withdraw the instant motion for a default judgment based on the facts set forth above. Shortly after our discussion, Plaintiff’s agreed to withdraw the motion and grant Defendants to until March 15, 2017 to respond to their complaint. Accordingly, we ask that this request be So-ordered by the Court.

We thank the Court for its attention to this matter.

Respectfully submitted,

/S/

Andrew J. Urgenson

cc: All counsel (*via ecf*)

Andrew J. Urgenson, Esq.

From: Andrew J. Urgenson, Esq. <andrew@ovedlaw.com>
Sent: Tuesday, September 22, 2015 11:34 AM
To: 'jmgurrieri@zellerlegal.com'
Subject: Galindo v. BLL

John:

As discussed, this firm has been retained to represent BLL in the above-referenced matter.

This email shall confirm that you have informed me that Plaintiff has yet to serve the complaint and therefore, our time to answer has not begun to run.

Looking forward to working this out with you as discussed.

Regards,

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